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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/464,902	12/16/99	OLSON	W 57906-AJPW/S

EXAMINER

HM12/0925

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ART UNIT	PAPER NUMBER
BUDENS, R	
1648	7

DATE MAILED: 09/25/01

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire One (1) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 78-90 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☐ Claim(s) _____ is/are rejected.
☐ Claim(s) _____ is/are objected to.
☒ Claim(s) 78-90 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.
☐ received in Application No. (Series Code/Serial Number) _____.
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice to comply with Sequence Rules
☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

The Art Unit location of your application in the Patent and Trademark Office has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1648.

The status of the related application(s) cited at the first page of the specification should be updated, if necessary, to ensure a properly completed file record.

This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 C.F.R. § 1.821(a)(1) and (a)(2). **See Figure 4.** However, this application fails to comply with the requirements of 37 C.F.R. § 1.821 through 1.825 for the reason(s) set forth on the attached Notice to Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.

APPLICANT IS GIVEN ONE MONTH FROM THE DATE OF THIS LETTER WITHIN WHICH TO COMPLY WITH THE SEQUENCE RULES, 37 C.F.R. § 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 C.F.R. § 1.821(g). Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 C.F.R. § 1.136. In no case may an applicant extend the period for response beyond the six month statutory period. Direct the response to the undersigned. Applicant is requested to return a copy of the attached Notice to Comply with the response.

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claim 78, drawn to a murine anti-CCR5 antibody, classified in Class 530, subclass 388.22.

II. Claims 79-80, drawn to a humanized anti-CCR5 antibody, classified in Class 530, subclass 388.15.

III. Claims 81-82, drawn to nucleic acids encoding a light chain of an anti-CCR5 monoclonal antibody, classified in Class 536, subclass 23.53.

IV. Claims 83-84, drawn to nucleic acids encoding a heavy chain of an anti-CCR5 monoclonal antibody, classified in Class 536, subclass 23.53.

V. Claims 85-86, drawn to nucleic acids encoding a Fab portion of an anti-CCR5 monoclonal antibody, classified in Class 536, subclass 23.53.

VI. Claims 87-88, drawn to nucleic acids encoding CDR regions of an anti-CCR5 monoclonal antibody, classified in Class 536, subclass 23.53.

VII. Claims 89-90, drawn to nucleic acids encoding the variable domain of an anti-CCR5 monoclonal antibody, classified in Class 536, subclass 23.53.

The inventions are distinct, each from the other because of the following reasons:

The products of Groups I-VII differ one from another in their physical properties such as chemical structure, primary sequence and molecular weight and are novel and unobvious in view of each other. Groups I and II are directed to structurally distinct antibodies. Groups III-VII are directed to different nucleic acid sequences encoding structurally distinct proteins. Therefore, the inventions of Groups I-VII are patentably distinct.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, and because the searches for the individual Groups are not coextensive, restriction for examination purposes as indicated is proper.

Further, Claims 81-90 read on both the murine monoclonal

antibody of claim 78 and the humanized antibodies of claims 79-80. Should Applicant elect any of the inventions of Groups III-VII, Applicant is required to further elect either nucleic acids reading on the murine monoclonal antibody as set forth in claim 78, or nucleic acids reading on the humanized antibody as set forth in claims 79-80. These nucleic acids encode different peptides and themselves differ in their primary nucleic acid sequence and are novel and unobvious in view of each other and are, therefore, patentably distinct.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed. (37 C.F.R. 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. 1.48(b) and by the fee required under 37 C.F.R. 1.17(h).

Papers relating to this application may be submitted to Group 1600 by facsimile transmission. The Fax number is (703) 308-4242. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Robert D. Budens at (703) 308-2960. The Examiner can normally be reached Monday-Thursday from 6:30 AM-4:00 PM, (EST). The Examiner can also be reached on alternate Fridays. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James Housel, can be reached at (703) 308-4027.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 308-0196.

Robert D. Budens
Primary Examiner
Art Unit 1648

rdb
September 24, 2001